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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YUKIO SAWAJIRI, HIROYUKI SAKAGAMI, and
MIKI OGINO

Appeal 2007-2479
Application 10/032,326
Technology Center 3600

Decided: August 28, 2008

Before WILLIAM F. PATE, III, JENNIFER D. BAHR and JOSEPH A.
FISCETTI, *Administrative Patent Judges*.

FISCETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-10. We have jurisdiction under 35 U.S.C. § 6(b). (2002)
A hearing was held on August 12, 2008.

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants claim a striker of a vehicle door latch which is said to improve the strength of the striker without making the latch of the door latch device large-sized. (Specification 1:2,3;4:27,28)

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A striker of a vehicle door latch device including a latch engageable with the striker, comprising:

a longitudinal plate metal base which defines a longitudinal axis to be fixed to a vehicle body; and

a U-shaped metal engaging member including a first straight leg part, a second straight leg part which is in parallel with the first leg part, and a front connecting part which connects a front end of the first leg part and a front end of the second leg part, wherein each leg part defines a longitudinal length and the front connecting part defines a longitudinal axis;

the longitudinal axis of the front connecting part being perpendicular to the longitudinal axis of the metal base;

wherein the longitudinal length of both the first leg part and the second leg part are perpendicular to the plane of the metal base;

each of said first leg part and said second leg part having, at rear end thereof which projects on a rear side of the base through a mounting hole of the base, a rear caulking flange with a larger diameter than that of the mounting hole engaged with a rear surface of the base; and

a front caulking flange with a larger diameter than that of the mounting hole engaged on a front side of the base;

said first leg part having, at a front side portion thereof, a latch engaging part which is engageable with the latch on the vehicle door latch device having a recess which is oriented on the latch to engage the latch engaging part;

said first leg part having, at a rear side portion thereof, a reinforced large diameter part with a larger diameter than that of the latch engaging part between the front caulking flange of the first leg part and the latch engaging part, said reinforced large diameter part being spaced apart from a plane of rotation of the latch;

wherein a length of said reinforced large diameter part being 20% or more of the length of the first leg part.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Hamada	US 6,042,160	MAR. 28, 2000
Ichinose	US 6,155,618	DEC. 5, 2000
Li	GB 2,336,178	OCT. 13, 1999

The following rejections are before us for review.

1. Claims 1-10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ichinose in view of Li¹ and further in view of Hamada.

¹ The Examiner and Appellants refer to GB 2,336,178 as “Mark” throughout the

ISSUE

The issue is whether Appellants have sustained their burden of showing that the Examiner erred in rejecting the claims 1-10 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Ichinose in view of Li and further in view of Hamada.

FINDINGS OF FACT

1. The Examiner found the following facts related to the disclosures of Ichinose, Li and Hamada relative to the claims:

...Ichinose discloses a striker comprising a longitudinal plate metal base (4) fixed to a vehicle body and defining a longitudinal axis and an U-shaped metal engaging member (5).

The engaging member includes a first leg part (5A), a second leg part (5B), parallel to the first leg part, and a front connecting part (5C), which connects a front end of the first leg part with a front end of the second leg part. The leg parts define longitudinal lengths and the front connecting part defines a longitudinal axis.

The longitudinal axis of the front connecting part is perpendicular to the longitudinal axis of the metal base. The longitudinal lengths of the leg parts are perpendicular to the plane of the metal base.

Each leg part has a rear end which projects on a rear side of the base through a mounting hole on the base

record, but the last name of the patentee is “Li” which we will use in our Decision to reference GB 2,336,178.

(Figures 6 and 7). Front and rear caulking flange have a larger diameter than the diameter of the mounting hole so as to engage a front and a rear side of the base respectively (Figures 6 and 7).

The first leg part has, at a front side portion, a latch engaging part, which is engageable with a latch on the vehicle door latch device (10).

However, Ichinose fails to disclose that at the rear side portion of the front leg part, the leg part has a reinforcing large diameter part that has a larger diameter than the one defined at the latch engaging part and that the latch has a recess that engage the latch engaging part.

Mark teaches that it is well known in the art to have a striker (10) that has first and second legs pads, wherein the leg parts (18 and 20), at the rear side portion, defines a reinforcing large diameter part (Figures 1 and 2)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a reinforcing large diameter part, as taught by Mark, into a device as described by Ichinose, in order to give more strength to the striker and to increase the durability of the striker.

As to the fact that the latch has a recess that engages the latch engaging part of the first leg part, Ichinose discloses the connection between a latch and the striker. Ichinose does not illustrate or discloses that the latch has a recess that engages the first leg. Although it is obvious that the latch (10) presented by Ichinose has a recess that receive the leg part of the striker, Hamada is provided to confirm and to teach that it is well known in the art to have a latch member (14) that has a recess that engages a leg part of a striker. Therefore, it is obvious to have a latch with a recess that engages a striker leg part.

(Final 3, 4)

2. Li discloses that “[t]he diameter of the bolt engaging portion 22 is sized to co-act with a rotating claw type bolt (not shown) of a co-acting latch mechanism, the size of the portion 22 and the bolt being sufficient for reliable and secure latch operation.” (Li, p. 3, ll.7-10.)

3. Li discloses that the increased thickness limb parts provides, *inter alia*, “...resistance to flexing and distortion during normal operation, in particular to withstand quite high forces generated during slamming of the door.”

(Li, p. 3, ll.12-14.)

4. Ichinose discloses an engaging member similar to Appellants’ in that

[t]he U shaped rod 5 comprises an outside leg [(analogous to Appellants’ first leg part)] portion 5A which is engageable with a latch 10 of the door latch device 9, an inside leg portion 5B which is in parallel with the outside leg portion 5A, and a bridge portion 5C which connects each tip of the leg portions 5A, 5B. The leg portions 5A, 5B are projecting toward the door 8 in the direction perpendicular to a plane of the base plate 4. The bridge portion 5C is in parallel with the plane the base plate 4.

(Ichinose, col. 2, ll. 9-17.)

5. The Specification describes the advantage of

[t]he combination of the reinforced large diameter part 20 and the latch engaging part 32 having the same diameter as the linear rod 14 improves the strength of the striker 10 without making the latch of the door latch device large-sized.

(Specification 4:25-28)

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *id.* at 1739, and discussed circumstances in which a patent might be determined to be obvious. In particular, the Supreme Court emphasized that “the principles laid down in *Graham* reaffirmed the ‘functional approach’ of *Hotchkiss*, 11 How. 248.” *KSR*, 127 S.Ct. at 1739 (citing *Graham*, 383 U.S. at 12 (emphasis added)), and reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* The Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 1740. The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.*

The Supreme Court stated that there are “[t]hree cases decided after *Graham* [that] illustrate the application of this doctrine.” *Id.* at 1739. “In *United States v. Adams*, ... [t]he Court recognized that when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.” *Id.* at 1739-40. “*Sakraida and Anderson’s-Black Rock* are illustrative – a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.* at 1740.

The Supreme Court stated that “[f]ollowing these principles may be more difficult in other cases than it is here because the claimed subject matter may involve more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement.” *Id.* The Court explained:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.

Id. at 1740-41. The Court noted that “[t]o facilitate review, this analysis should be made explicit.” *Id.* (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”)). However, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”

ANALYSIS

For the reasons that follow, we sustain the Examiner’s rejection of claim 1 as being unpatentable under 35 U.S.C. § 103(a) over Ichinose in view of Li and further in view of Hamada. Appellants’ argument likewise fails to demonstrate error in the rejection of claims 2-10, which Appellants have not argued separately from claim 1. As such, we sustain the rejection of claims 2-10.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this opinion. Arguments which Appellants could have made but chose not to make in the Brief

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have not been considered and are deemed to be waived. See 37 C.F.R. § 41.37(c)(1)(vii).

Appellants argue that “[n]one of the prior art of the cited combination teach a latch which engages a front side portion of a first leg part (the latch engaging part) in a plane of rotation spaced apart from a rear side portion (the reinforced large diameter part) as claimed.” (Appeal Br. 10.)

We are not persuaded by Appellants’ argument here because Appellants are attacking the references individually when the rejection is based on a combination of references which, as proposed (FF 1), results in the latch of Ichinose engaging a modified front side portion of a first leg part in a plane of rotation spaced apart from a rear side portion (*Id.*). See *In re Keller*, 642 F.2d 413 (CCPA 1981); *In re Young*, 403 F.2d 754, 757-58 (CCPA 1968).

Appellants further argue that it would not be

...obvious to provide Ichinose with a reinforcing large diameter part in light of Mark, because the Mark striker is dramatically different from that of Ichinose that the skilled artisan would not address for modification of a conventional striker such as that of Ichinose. Most important, is the fact that Mark teaches extending the large diameter parts on the limbs 16, 20 nearly to the junction with engaging portion 22 leaving no portion of limbs 16, 20 available for engagement of a latch as provided by Appellant.

(Appeal Br. 10, 11.)

We are not persuaded by Appellants’ argument that Li does not teach forming the diameter of the latch engaging portion 22 diametrically smaller than

the supporting major limb parts 18 and 20. When the teachings of Li are applied to Ichinose, a person with ordinary skill in the art would know to maintain the standard diameter of the U-shaped rod 5 where the first leg part 5A engages with the latch 10 (*see* Figure 7 of Ichinose, (FF 4)) so as to insure engagement with a standard sized latch, but also to increase the diameter of the remainder of the leg part lengths up to the connection point with the base plate 4 to increase its strength. In Li, this design is said to allow it to withstand quite high forces generated during slamming of the door (FF 3), which is a problem likewise addressed by Appellants' design (FF 5). "Under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." *KSR* at 1742.

The Appeal Brief, between pages 11 and 12, lists a number of perceived deficiencies in Li, but any lack of disclosure of such items in Li does not indicate a deficiency in the rejection of claim 1 under 35 U.S.C. § 103(a) because, as stated earlier, the rejection is based on a combination of references which results in a combination which meets the requirements of the claims (FF 1). Appellants are attacking Li singularly. *See In re Keller* at 426.

Finally, Appellants argue that "...the combination of Ichinose and Mark would [not] be obvious to the skilled artisan, especially in light of the indication in the last full paragraph of page 3 of Mark that the different features of Mark are intended to permit the making of strikers of complex shapes." (Appeal Br. 12.)

However, while the formation of the increased striker diameter portion is

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disclosed in Li for accommodating complex striker shapes, this is only one of the reasons given for fabricating the striker in this manner. The other reason, which is congruent with Appellants' (FF 5), is to provide "resistance to flexing and distortion during normal operation, in particular to withstand quite high forces generated during slamming of the door." (FF. 3)

Accordingly we conclude Appellants have failed to show error in the Examiner's rejection under 35 U.S.C. § 103(a).

CONCLUSIONS OF LAW

We conclude:

We affirm the rejection of claims 1-10 under 35 U.S.C. 103(a) as being unpatentable over Ichinose in view of Li and further in view of Hamada.

DECISION

The decision of the Examiner to reject claims 1-10 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

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